IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23073 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJUBEN MANUSINH RAJPUT
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS SUBHADRA G PATEL for Petitioner.
RULE SERVED BY DS for Respondent Nos. 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 12/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under provisions of Prevention of Anti Social Activities Act (“PASA” for short), has challenged her detention order dated 21-10-2005, by which she is detained as a “bootlegger” under PASA. Along with the order of

detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference to three criminal cases pending against the petitioner. It is alleged that the petitioner is dealing in country liquor. In the detention order, it is mentioned that since the petitioner is dealing in liquor, she is required to be detained under PASA, as her activities are prejudicial to public health.

2) Ms.Subhadra Patel, learned advocate for the petitioner submitted that there is no credible material on record for coming to the conclusion that the activities of the petitioner are injurious to public health. Therefore, she submitted that order of detention passed against the petitioner is required to be quashed. To substantiate her say, learned advocate for the petitioner has relied upon decision of Division Bench of this Court in Letters Patent Appeal No.223/2000 dated 22-8-2000. In the aforesaid case, Division Bench of this Court has observed in paragraph-5 that in order to find out as to whether it is a case of breach of public order or breach of public health credible material has to be there.

3) On the other hand, learned APP, Mr.N.D.Gohil submitted that statements of witnesses have not been recorded in this case. He, however, submitted that since the petitioner is storing and selling country liquor, she is rightly detained under PASA as a "bootlegger".

4) In paragraph – 6 of the affidavit-in-reply filed by the Commissioner of Police, Baroda, which is at page 59 of the compilation, it is stated as under :

> "Contents of para 5 are denied. With regard to this contention, I say and submit that the grounds of detention are true and correct

> and based on documentary evidence. I say and submit that three offences have been registered against the petitioner under the provisions of Bombay Prohibition Act. I say and submit that the petitioner is illegally storing and selling the liquor. I say and submit that the liquor is injurious to health and like to create health hazard in general public. I say and submit that the statements of witnesses have not been supplied to the petitioner. Thus, the petitioner is not disturbing the law and order, but disturbing the public order. Therefore, after subjectively satisfying myself, I passed the order of detention, which is just, legal and proper."

5) Learned advocate for the petitioner further submitted that only because the petitioner was alleged to have possessed country liquor, it cannot be said that her activity is prejudicial to public health. It is submitted by her that the authority has not applied its mind properly while coming to the conclusion that the activity of the petitioner is prejudicial to public health, even when there is no material on record in this behalf. In order to substantiate her say, Ms.Subhadra Patel has relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822. In the aforesaid case, the Supreme Court has observed as under in paragraph 7 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such

material should also be given to the detenu to afford him an opportunity to make an effective representation."

6) Since the statements of witnesses have not been recorded it seems that the petitioner is detained under PASA only on the basis of pending criminal cases. So far as criminal cases pending against the petitioner are concerned, they are in connection with violation of law of the land and there is no material worth the name to substantiate the say of the department that the activity of the petitioner is prejudicial to public health.

7) In view of the aforesaid aspect of the matter, this petition is required to be allowed as it cannot be said that the activity of the petitioner is such, which may affect the public health, as there is no material to support this stand of the department. Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activity of the petitioner is prejudicial to public health, at the most it can be said that the petitioner is guilty of violating law and order but it cannot be said that the activity of the petitioner is prejudicial to public health, therefore, the impugned order of detention is required to be quashed and set aside.

8) For the foregoing reasons, this petition is allowed. Order of detention passed against the petitioner dated 21-10-2005 is quashed and set aside. Petitioner- Manjuben Manusinh Rajput is ordered to be released forthwith unless her presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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